

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B01

PLR-110374-13

Date:

September 18, 2013

### Legend

Acquirer =

Target Parent =

Target =

Business A =

Business B =

System =

Regulatory Agency =

Agreement A =

Agreement B =

Target Notes =

State A =

State B =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

Date 12 =

\$aa =

\$bb =

\$cc =

\$dd =

\$ee =

\$ff =

\$gg =

\$hh =

\$ii =

v% =

w% =

x% =

y% =

z% =

Class X =

Class Y =

Dear :

This letter responds to a letter dated March 1, 2013 from your authorized representative requesting a ruling on certain federal income tax consequences of a Completed Transaction (defined below). The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required on examination.

#### SUMMARY OF FACTS

Acquirer is a State A corporation whose stock is publicly traded and widely held. Acquirer is engaged in Business A, and is the common parent of an affiliated group of corporations that join in filing a consolidated federal income tax return.

Target Parent is a State B corporation that is the common parent of an affiliated group of corporations that join in filing a consolidated federal income tax return (the "Selling

Group”). Target Parent formed Target in Year 1 to develop System in order to engage in Business B. Until the Completed Transaction at issue, Target was a member of Target Parent’s consolidated group. In order to fund development of System and Target’s operations, Target issued the Target Notes to the public.

Target filed for bankruptcy protection on Date 1. At the time Target filed for bankruptcy, Target Parent owned more than 80% of the vote and value of Target’s stock. Target Parent owned Class X common stock representing z% of Target’s common stock, and minority shareholders held Class Y common stock representing the remaining y% of Target’s stock. Certain holders of the Target Notes held options to acquire Class Y common stock of Target representing x% of Target’s outstanding common stock (the “Note Holder Options”). Target had no other stock outstanding.

In order to acquire all of the Target stock held by Target Parent, Acquirer entered into two agreements with certain members of the Selling Group, Agreement A and Agreement B. The two agreements set forth the steps, described below as the Completed Transaction, by which Acquirer would acquire Target. Agreement A, between Acquirer and Target, set forth the steps by which Acquirer would acquire all of the newly-issued stock of Target upon Target’s emergence from bankruptcy. Agreement B, between Acquirer and Target Parent, provided that Acquirer would pay Target Parent specified payments upon the occurrence of certain events set out in Agreement B. Agreement A required bankruptcy court approval in order to be effective, and later steps in Agreement A required approval by Regulatory Agency. Agreement B required no bankruptcy court approval and only a portion of the agreement was subject to Regulatory Agency approval.

### COMPLETED TRANSACTION

The Completed Transaction was executed through the steps described below:

- (i) On Date 2, the bankruptcy court approved Target’s entering into Agreement A.
- (ii) On Date 3, Acquirer paid Target Parent \$aa pursuant to Agreement B.
- (iii) From Date 4 to Date 6, Acquirer conducted the tender offer required by Agreement A (the “Tender Offer”). As part of the Tender Offer, Acquirer acquired w% of the Target Notes from Target’s third-party creditors for \$dd. Acquirer also acquired \$ee of the \$ff of general unsecured and other claims against Target. After the Tender Offer, Acquirer held v% of the Target Notes.
- (iv) On Date 5, Acquirer, Target Parent, and Target filed a consolidated application with Regulatory Agency to transfer control of Target from Target Parent to Acquirer (the application for “Regulatory Approval”).

- (v) On Date 7, Acquirer paid \$bb to Target Parent pursuant to Agreement B.
- (vi) On Date 8 Target filed its proposed plan of reorganization (the “Reorganization Plan”) with the bankruptcy court.
- (vii) On Date 9, the bankruptcy court entered an order confirming the Reorganization Plan, but conditioned the effective date of the Reorganization Plan upon receipt of Regulatory Approval.
- (viii) On Date 10, Regulatory Agency granted Regulatory Approval.
- (ix) On Date 11, the bankruptcy court entered a “Notice of Occurrence” that provided that the effective date of the Reorganization Plan was Date 11 and that the Reorganization Plan was therefore consummated.
- (x) On Date 11, Acquirer paid Target Parent \$cc pursuant to Agreement B.
- (xi) On Date 11, in exchange for all of the stock of newly-reorganized Target, Acquirer contributed (1) \$hh cash to fund the “Net Equity Distribution” and to pay off remaining creditors of Target; and (2) the Target Notes and the other general unsecured and other claims against Target held by Acquirer (collectively the “Contributed Debt”) pursuant to Agreement A. The Contributed Debt had an aggregate fair market value on Date 11 of \$jj.
- (xii) On Date 11, simultaneously with Step (xi) above and pursuant to the Reorganization Plan, the existing Target stock was canceled, and the holders of the existing Target stock received their pro-rata share of the “Net Equity Distribution” provided for in the Reorganization Plan. The minority shareholders of Target received \$gg in exchange for their Target stock as their share of the “Net Equity Distribution.” Target Parent received nothing in exchange for its existing Target stock because its share of the “Net Equity Distribution” had been reduced to zero by the \$bb payment from Acquirer under Agreement B described in Step (v) above.
- (xiii) On Date 12, Acquirer and Target Parent filed a Form 8023, Elections Under Section 338 for Corporations Making Qualified Stock Purchases, and made a section 338(h)(10) election with respect to Acquirer’s acquisition of Target. The Form 8023 reflected an acquisition date of Date 11.

## REPRESENTATIONS

The following representations are made with respect to the Completed Transaction:

- (a) At all times during the Completed Transaction, Target did not have outstanding any warrants, options, convertible securities or any other type of right pursuant to which any person could acquire stock of Target, other than the call right held by Acquirer pursuant to Agreement B, the Note Holder Options, and the Target Notes.
- (b) The terms of Agreement A and Agreement B were determined pursuant to arm's-length negotiations between Acquirer, on one hand, and the Selling Group, on the other hand.
- (c) Immediately after the Completed Transaction, Acquirer will not be attributed any stock held by Target Parent pursuant to the rules of section 318(a) (without regard to section 318(a)(4)).
- (d) Immediately after the Completed Transaction, there was no plan or intention on the part of Acquirer to sell or otherwise dispose of any of the Target stock acquired in the Completed Transaction.
- (e) Immediately after the Completed Transaction, there was no plan or intention to liquidate Target or Acquirer (other than the deemed liquidation of Target pursuant to Treas. Reg. § 1.338(h)(10)-1(d)(4)), or to merge Target or Acquirer into any other corporation following the Completed Transaction.

#### RULINGS

Based solely on the information submitted and the representations made above, we rule as follows regarding the Completed Transaction:

Acquirer acquired all of the Target stock held by Target Parent in a transaction constituting a qualified stock purchase on Date 10. (Section 338(d)(3); section 338(h)(2); Rev. Rul. 82-150, 1982-2 C.B. 110).

#### CAVEATS

No opinion is expressed about the federal income tax consequences of the Completed Transaction under other provisions of the Code or regulations or the federal income tax treatment of any conditions existing at the time of, or effects resulting from, the Completed Transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

- (i) Whether Acquirer and Target Parent validly made a joint election under section 338(h)(10);

- (ii) The federal income tax consequences of Acquirer and Target Parent having made a joint election under section 338(h)(10); or
- (iii) The federal income tax consequences of any actual or deemed transaction occurring on Date 11.

#### PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Mark S. Jennings  
Branch Chief, Branch 1  
Associate Chief Counsel (Corporate)